

ORIGINAL

ORIGINAL  
FILE

RECEIVED

OCT - 1 1992

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 97 of the  
Commission's Rules to Relax  
Restrictions on the Scope of  
Permissible Communications in  
The Amateur Radio Services

)  
)  
)  
)  
)  
)  
)

PR Docket No. 92-136  
RM-7849  
RM-7895  
RM-7896

To: The Commission

---

COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

---

THE AMERICAN RADIO RELAY  
LEAGUE, INCORPORATED  
225 Main Street  
Newington, CT 06111

Christopher D. Imlay  
BOOTH, FRERET & IMLAY  
1233 20th Street, N. W.  
Suite 204  
Washington, D. C. 20036

October 1, 1992

No. of Copies rec'd  
LSHABODE

0+5

RECEIVED

SUMMARY

OCT - 1 1992

FEDERAL COMMUNICATIONS COMMISSION  
SECRETARY

The American Radio Relay League, Incorporated comments in support of the Commission's Notice of Proposed Rule Making, 7 FCC Rcd. 4231 (1992). The Notice proposes to amend the rules governing the Amateur Radio Service by relieving restrictions on the scope of permissible communications that amateur stations may transmit.

The League believes that the proposed restatement of §97.113 of the Rules is a good balance between the need to protect the Amateur Service from commercial exploitation on the one hand, and the desirability of encouraging amateur public service communications on the other hand. By changing the focus of the evaluation of an amateur transmission from the beneficiary of the communications to the amateur station initiating the communications, the Commission has made the rule easier for amateurs to apply.

The premise inherent in the proposed rule is that amateurs who are not paid for providing the communications, and who cannot derive pecuniary benefit for themselves or for their employers from those communications, can and will avoid commercial exploitation of the Service. This new emphasis avoids the more subjective, and often controversial review of whether the public or a sponsor of an event is the principal beneficiary of the communications.

The creation of a new exception to the "no compensation" rule, for teachers who use amateur radio in classroom instruction, is an important element of the restatement of the rule. It will allow amateur radio to be used to its full educational capability for young persons, and without any significant potential for abuse.

The League strongly supports the proposed restated rule, with the editorial corrective change noted in these comments, and urges the Commission to adopt the proposed rule without delay.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

OCT - 1 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Part 97 of the	)	
Commission's Rules to Relax	)	PR Docket No. 92-136
Restrictions on the Scope of	)	RM-7849
Permissible Communications in	)	RM-7895
The Amateur Radio Services	)	RM-7896
To: The Commission		

COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

The American Radio Relay League, Incorporated (the League), the national non-profit association of amateur radio operators in the United States, by counsel and pursuant to §1.415 of the Commission's Rules, hereby respectfully submits its comments in response to the Notice of Proposed Rule Making (the Notice), 7 FCC Rcd. 4231 (1992). The Notice proposes to amend the Rules for the Amateur Radio Services by a relief of restrictions on the scope of the permissible communications that amateur stations may transmit. The proposal is in response to certain petitions for rule making<sup>1</sup>

---

<sup>1</sup> See, RM-7849, submitted by Michael R. Reynolds; and RM-7896, submitted by Henry B. Ruh.

and a proposal by the League in letter form<sup>2</sup>. In support of the proposals contained in the Notice, the League states as follows:

1. The League is gratified that the Commission has proposed, essentially verbatim, the text of the League's proposed restatement of §97.113 of the Rules. As a policy matter, the League continues to believe that the regulatory emphasis is properly placed in the proposed restatement. The reason is that, in recent years, interpretations of the current rule have been overly strict, and have led the Amateur Service away from public service communications. While the League, and the Amateur Radio Service generally appreciate the Commission's staunch protection of the non-commercial integrity of the Amateur Radio Service, the same interpretations of the prohibited transmissions rule have often resulted in amateurs being hamstrung into inaction. The initial intent of the prohibition of business communications in the Amateur Radio Service was to allow amateurs to freely participate in public service activities without fear of exploitation, provided that they did not derive pecuniary benefit from it. When the rule is applied so as to prohibit those activities that it was intended to protect, a clarification or restatement is necessary. As proposed in the League's letter, the proposed restatement constitutes a good, workable middle ground which offers the requisite protections

---

<sup>2</sup> See the Letter dated January 6, 1992, which was accorded file number RM-7895 by the Commission. The letter proposed a restatement of Section 97.113 of the Commission's rules (47 C.F.R. §97.113) and traced the background of the rule and the basis for the proposed restatement. It will be referred to herein as "the letter".

against exploitation without anomalously prohibiting activities in which amateurs should be able to routinely participate.<sup>3</sup> It is not suggested that the proposed restatement will eliminate all interpretational problems of message content regulation that have hampered public service activities in the Amateur Radio Service in recent years. Nor is it a rule which eliminates all potential for abuse. It does, however, strike a far better balance than does the current rule, and does so by allowing the Amateur Radio Service more latitude for self-regulation than does the current rule, while removing obstacles to true public service communications. The League's letter explained the philosophical underpinnings of the proposed restatement:

...(W)ith respect to the content of transmissions, amateur-to-amateur communications should be permitted unless specifically prohibited; and...in general, unless amateur communications are done for compensation, or for the pecuniary benefit of the amateur or his or her employer, they are permissible.

(Letter, at 2)

---

<sup>3</sup> The Chief, Private Radio Bureau has himself offered a good example of the anomalies created under current interpretations of the current iteration of §97.113 of the Rules; when attending an amateur radio convention sponsored by an amateur radio club, his arrival at the convention was announced on an amateur radio VHF repeater. Because the convention was a regular business activity of the club (albeit nonprofit) the transmission was unlawful, as it facilitated the club activities. Another example of the shortfall of the present rule is that amateurs, strictly speaking, could not assist the Red Cross in post-emergency relief efforts, inasmuch as the regular business affairs of the Red Cross is in fact relief efforts. The anomalies result, in large part, from the fact that the current rule focuses on the benefits of amateur communications derived by the recipients of the communications. The League believes that the proper analysis is on the pecuniary benefit to be derived by the amateur or amateurs providing the communications.

2. Thus, the proposed restatement addresses the permissibility of amateur communications from the point of view of the benefit to be derived therefrom by the amateur, not with respect to the ultimate beneficiary of the communications. This will eliminate the determination called for under the present rule, as to whether the public will benefit from certain amateur communications more than an individual (non-amateur) entity, such as the sponsor of a public service event. That is a speculative analysis at best. The new rule will also avoid other similar, subjective interpretations of the permissibility of certain communications. It is understood that under the proposed rule, certain non-amateur individuals and entities could benefit from amateur communications, and might seek to utilize the Amateur Radio Service for private advantage. For example, a commercial sponsor of a parade or public event might seek to utilize amateur radio operators to coordinate its activities. The assumption that is warranted in that instance is that amateurs will not suffer exploitation of their Service for long. Provided that an amateur is not compensated for the communications, nor otherwise to derive pecuniary benefit from it, and if his or her employer does not benefit therefrom, he or she may be relied upon to diligently protect the non-commercial integrity of the Service from exploitation by non-amateur entities. It is believed that the Amateur Radio Service will not give the Commission cause to re-evaluate the flexibility accorded by the proposed restatement.

3. It is not only the philosophy behind the proposed rule which demonstrates the Commission's willingness to entrust the Amateur Radio Services with additional flexibility. The text of the rule itself bespeaks a willingness to rely on amateurs themselves to determine the proper limits for the content of their communications. For example, the proposed rule would allow amateurs to notify other amateurs of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis. The term "regular" in this context is not defined. Indeed, it would be difficult to define such a term specifically on a temporal basis.<sup>4</sup> It is apparent from the rule, however, that such transmissions relate to matters of pecuniary interest to the amateur making them, and that they are not what the Commission intends or expects

---

<sup>4</sup> This is not to suggest that the Amateur Service needs no direction from the Commission in interpreting the "on a regular basis" language of the rule. Anecdotal examples of permitted amateur communications, and of those which the Commission believes should be prohibited, are in order, and should be included in the Report and Order which resolves this proceeding. For example, the restated rule would permit amateurs to discuss the affairs of their amateur radio clubs on the air. They would be able to assist in, for example, the Iditarod dogsled race, a once-annual event in which amateurs participate by providing communications over the long distance of the race course in which amateur radio is uniquely suited to assist. They would be able to assist in occasional neighborhood functions, such as a Halloween "Goblin Patrol". They would not, however, due to the regularity of the function and the allocation of radio frequencies to other radio services clearly intended for such purposes, be able to use amateur radio for police auxiliary functions such as nightly or weekly neighborhood watches, Sheriff's patrols, or coordination of parking cars for the local horse racetrack. The recitation of those events which are permissible, and those which clearly are not, will provide the requisite direction for amateurs to apply the restated rule for themselves.

amateur frequencies to be used for normally. Amateur "swap nets" are permitted under the present §97.113, however, and the instructional use of the term "not conducted on a regular basis" in the existing rule has not proven particularly difficult for amateurs to apply in the past.

4. A slightly more difficult conceptual application is presented in proposed §97.113(a)(4), which would prohibit the transmission of "(c)ommunications, on a regular basis, which could reasonably be furnished alternatively through other radio services".<sup>5</sup> Strictly speaking, amateur communications could often conceivably be furnished alternatively through other radio services. For example, land mobile two-way business, industrial, SERS, or GMRS radios could be used in certain emergency or public service communications. The proposed restated rule, however, is intended to serve as a guideline, to explain that the Amateur Radio Service is not a substitute for, as an example, the Police Radio Service. The rule conveys the general premise that the protection of the integrity of the Service from exploitation is that of the amateurs themselves. A reasonable person's interpretation of that subsection would make it apparent, for example, that amateurs cannot "regularly" conduct police patrols with police officers or local sheriff's offices using amateur radio, though the enlistment of local amateurs in an occasional search and rescue effort, or the

---

<sup>5</sup> The present rule, at §97.113(a), is similar, but is stated in absolute terms: "No station shall transmit communications as an alternative to other authorized radio services, except as necessary to providing emergency communications".



annual Halloween "Goblin Patrol" to protect children during trick-or-treat activities, would be permissible. Amateurs may provide volunteer communications at the Rose Bowl Parade, an occasional event, even though land mobile radios or cellular telephones could be used instead, because it is not a regular activity. The goal of stating a message content rule in terms of guidelines, rather than to attempt to categorize often anomalous factual circumstances rigidly, is both to permit public service flexibility for amateur licensees, and to minimize interpretational difficulties for those same amateurs and for Commission staff.<sup>6</sup>

5. Other portions of the proposed §97.113 are properly stated in absolute, or specific, terms. Only under special, limited circumstances may amateurs provide news information to broadcasters or engage in one-way transmissions, for example. Obscene, indecent or profane transmissions are prohibited, as are messages in codes or ciphers. Specific exceptions to the "no compensation" rule are

---

<sup>6</sup> The use of the term "regularly" in this context is, again, not to be interpreted as a means of defining with numerical precision how often an amateur may utilize Amateur Radio frequencies as an alternative to other radio services, but rather to establish that such use is not a principal purpose of the Amateur Radio Service; that it is abnormal; and is not to be encouraged. Whether abuse of this rule has occurred is to be determined on a case-by-case basis; but the presumption is that amateurs themselves, being traditionally fiercely protective of their Service and their frequencies, will know when an abuse is occurring and will take steps to prevent it from happening, or if it does, from reoccurring. While imprecision in rules is normally a matter to be avoided, flexibility is in this case the better goal. Use of the "not on a regular basis" concept, as mentioned above, is contained in the current §97.113 in the context of amateur "swap nets" and has not proven a difficult concept to apply in practice.

narrowly stated. These are rules which are required in order to protect the non-commercial, (or overall) integrity of the Service from obvious encroachment, or where the danger of compromise of the Service is particularly great. With respect to these specific rules, few interpretational problems are likely to arise. They are carried over from the existing rule section.

6. One specific exception from the general prohibition on compensation which is particularly important is the authorization for teachers to utilize amateur radio in classroom instruction to be compensated during those times. This is a new proposal, but one which the League believes is important in furthering study by young people of science and geography in the United States. Amateur Radio is a proven source of interest in both disciplines, but its capabilities in the classroom are extremely restricted under the current rule. This new exception to the general rule regarding compensation for station operation is perhaps the most important portion of the Notice proposals, and should be implemented without delay.

7. The Notice is well-stated. It indicates a firm intention on the part of the Commission to protect the Amateur Radio Service from any commercial influence that would change its essentially compliant, self-regulatory character<sup>7</sup>, but expresses also a

---

<sup>7</sup> The Notice, at paragraph 10, states that the Commission's Notice proposals are "not intended to alter in any way the nature and purpose of the amateur service. Rather, they are intended to give amateurs operators more flexibility to serve the public as well as to enhance their personal communication capabilities."

willingness to entrust amateurs with the ability to do more in the way of public service communications<sup>8</sup>. To preclude any possible misconception, however, and to allay the expressed fears of the Commissioners at the Open Meeting at which the Notice in this proceeding was discussed, it is important to clarify that the League expects no noticeable change in amateur operations as the result of its implementation<sup>9</sup>. The exception is an increased willingness on the part of amateurs to participate in public service events to insure the safety of attendees and participants. As the Chief, Private Radio Bureau stated at that Open Meeting, the principal benefit of the restatement of §97.113 will be the elimination of anomalous and often conflicting applications of the rule.

8. As a final matter, the proposed Appendix contains what apparently is an unintentional error. The Notice states an

---

<sup>8</sup> The Commission notes that this increased flexibility places an additional responsibility on amateurs for self regulation and cooperation in the use of the limited, and often crowded, amateur frequency allocations. See the Notice, at Paragraph 10.

<sup>9</sup> The League is somewhat concerned, for example, about the statement at Paragraph 6 of the Notice, to the effect that there is "widespread" use of amateur frequencies by amateurs to "bolster governmental functions". This is not, hopefully, to imply that amateurs are routinely using amateur equipment for routine local government functions. Rather, the use of amateur radio in activities in which police or fire departments are involved is during emergencies, or in the preparation for emergencies, and not as an integral part of a police or fire communication system. Similarly, the reporting of weather data to the National Weather Service is a reporting function conducted by amateurs either in preparation for, or during severe weather emergencies, and not as an agency of the National Weather Service.

intention to adopt the League's proposed restatement verbatim. At §97.113(e), however, the word "such" in the second sentence should read "shuttle"<sup>10</sup>. The error would make the text of the sentence illogical, by requiring permission from the wrong agency for weather and propagation information retransmissions. The text in the League's letter is correct as stated.

9. The League appreciates the degree of trust of the Amateur Radio Service reflected in the instant proceeding. It is believed that the implementation of the proposed rule changes constitutes a reasonable accommodation for public service communications, without any encouragement to those who would exploit the Service for commercial purposes. It is recommended that the proposed restated §97.113 be implemented without delay.

---

<sup>10</sup> The text of §97.113(e) should read as follows:


No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information originating from United States Government stations, and communications originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for shuttle retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the Commission adopt the Notice proposal without change, other than to correct a single typographical error in the proposed appendix.

Respectfully submitted,

**THE AMERICAN RADIO RELAY  
LEAGUE, INCORPORATED**

225 Main Street  
Newington, CT 06111

By   
Christopher D. Imlay  
Its Counsel

BOOTH, FRERET & IMLAY  
1233 20th Street, N. W.  
Suite 204  
Washington, D. C. 20036  
(202) 296-9100

October 1, 1992